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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
for Compliance Review of Utility Owned
Generation Operations, Portfolio Allocation
Balancing Account Entries, Energy Resource
Recovery Account Entries, Contract
Administration, Economic Dispatch of Electric
Resources, Utility Owned Generation Fuel
Procurement, Diablo Canyon Seismic Studies
Balancing Account, and Other Activities for the
Record Period January 1 Through December 31,
2019.

Application No. 20-02-009
(Filed February 28, 2020)

(U 39 E)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
APPLICATION FOR REHEARING OF DECISION 21-07-013**

JENNIFER K. POST
KRISTIN D. CHARIPAR

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 535-4138
Facsimile: (415) 973-5520
E-Mail: Kristin.Charipar@pge.com

Dated: August 16, 2021

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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APPLICATION FOR REHEARING DECISION 21-07-013**

Pursuant to Public Utilities Code § 1731 and California Public Utilities Commission Rule of Practice and Procedure (Rule) 16.1, PG&E respectfully files this Application for Rehearing of Decision (D.) 21-07-013. The Commission issued the Decision Resolving Phase One of Pacific Gas and Electric Company’s (PG&E) ERRA Compliance Application for the 2019 Record Year, D.21-07-013 (Decision), issued on July 16, 2021. Rule 16.1 requires that an application for rehearing be filed within 30 days of the date the Commission mails the decision.^{1/} This application is timely filed by the deadline of August 16, 2021.

PG&E supports the Decision as largely consistent with California statutory law and Commission precedent. However, PG&E seeks rehearing on a single, narrow issue: the Decision’s direction to proceed with evaluating potential disallowances for 2019 Public Safety Power Shutoff (PSPS) events in a Phase II of this proceeding. Specifically, to the extent the Decision suggests that the Commission might deviate from ERRA’s automatic balancing account adjustment mechanism and instead *prohibit* PG&E from adjusting its revenue requirement for any “undercollected” amounts resulting from unrealized sales during the 2019 PSPS events, the Decision is effectively imposing a *disallowance* or *penalty* based on PG&E’s 2019 PSPS events,

^{1/} Rule 16.1(a); Pub. Util. Code, § 1731(b).

which is in direct conflict with the Commission’s decision in the PSPS OII Decision. To the extent the Decision incorrectly stated that Phase II would consider adjustments to the revenue requirement, but instead intended to review rate adjustments for undercollected amounts from unrealized sales during the 2019 PSPS event, the Decision still errs because Commission review and approval or rate adjustment is unnecessary because such adjustments are a normal course in the balancing account true-up process. The Decision contains legal error and should be rectified.

I. BACKGROUND

On November 13, 2019, the Commission opened Investigation (I.) 19-11-013 (PSPS OII) to determine whether California’s electric investor-owned utilities prioritized safety and complied with the applicable laws, rules, and regulations when the utilities relied upon PSPS events as a wildfire mitigation measure to safeguard against potential catastrophic wildfire ignited by the utility’s electric infrastructure for 2019 PSPS events.^{2/} In Phase I of the PSPS OII proceeding, the Safety and Enforcement Division (SED) evaluated the utilities’ actions prior to, during, and after the PSPS events, as well as the utilities’ compliance with the Commission’s existing de-energization regulations and requirements.^{3/} The SED Report was completed on April 30, 2020.

Meanwhile, on February 27, 2020, the Commission issued D.20-02-047 in PG&E’s 2020 Energy Resources Recovery Account (ERRA) Forecast proceeding (Application (A.) 19-06-001) stating that “the question of whether and how each utility’s revenue collections were impacted by any PSPS events has not previously been examined” and directed PG&E to include in its 2019 ERRA Compliance application an accounting of the 2019 PSPS events and how it impacted its revenue collections.^{4/} PG&E submitted supplemental testimony in the 2019 ERRA Compliance proceeding with a quantification of the “lost sales and revenue” due to 2019 PSPS events,

^{2/} D.21-06-014, p. 5.

^{3/} *Id.*, p. 29.

^{4/} D.20-02-047, pp. 24-25, p. 32, Finding of Fact (FOF) 19, and p. 34, Conclusion of Law (COL) 3.

pursuant to the 2020 ERRA Forecast directive, on April 13, 2020.^{5/} On August 14, 2020, the *Assigned Commissioner's Amended Scoping Memo and Ruling* established that a Phase II of the 2019 ERRA Compliance proceeding would consider the following issues:

1. Should sales forecasting methods for adjusting revenue requirement under current decoupling policy be adjusted to account for power not sold during a PSPS event? If so, how?
2. What methods should be used to account for sales lost during PSPS distinct from sales reductions due to conservation?
3. If a utility does not collect its entire revenue requirement due to lower volumetric sales during a PSPS, should it be prevented from adjusting future revenue requirements to make up for any undercollection? If so, how?^{6/}

While Phase I of the 2019 ERRA Compliance case was ongoing, the Commission opened a Phase II of the PSPS OII to consider the following issues:

1. *Evaluation of the Implementation of 2019 PSPS Events.* Did PG&E, SCE, and SDG&E in October and November 2019 comply with the criteria set forth in D.19-05-042 and other applicable laws and regulations when proactively deenergizing and re-energizing their power lines?
2. *Corrective Action Based on 2019 PSPS Events.* What corrective actions should the Commission require of PG&E, SCE, and SDG&E for any failure in late 2019 to comply with the then-existing PSPS Guidelines?^{7/}

After extensive litigation in the PSPS OII Phase II proceeding, the Commission issued D.21-06-014 (PSPS OII Decision) on June 3, 2021. The PSPS OII Decision found that the utilities did not reasonably comply with the critical guideline to identify, evaluate, weigh, and report public risks for the late 2019 PSPS events.^{8/} Accordingly, the Commission determined a remedy that would apply *prospectively* from the effective date of the decision. Specifically, the Commission stated:

“...we find that a ratemaking remedy, in the form of a future downward rate adjustment for customers with the amount of the downward adjustment tied to the duration and scope of any future

^{5/} See A.20-02-009, Exhibit (Exh.) PG&E-2: PG&E Supplemental Testimony.

^{6/} A.20-02-009, *Assigned Commissioner's Amended Scoping Memo and Ruling* (Aug. 14, 2020), p. 4.

^{7/} I.19-11-013, *Assigned Commissioner's Scoping Memo and Ruling* (Aug. 3, 2020), p. 8.

^{8/} D.21-06-014, p. 59.

PSPS events will serve to address the Commission's concerns discussed above and recognize the undue harms caused to customers by overly broad PSPS events. To minimize the complexity of this ratemaking remedy, *this downward rate adjustment will not apply retroactively but, instead, apply starting on the effective date of this decision.*" (emphasis added)^{9/}

Notably, the final adopted language in this decision was modified from the proposed decision, as follows: "To minimize the complexity of this ratemaking remedy, this downward rate adjustment will not apply retroactively ~~to 2019~~ but, instead, apply starting on the effective date of this decision."^{10/} The PSPS OII Decision directs that utilities shall include the estimated unrealized volumetric sales and unrealized revenue resulting from future PSPS in their respective ERRA proceedings, addressing the years in which the PSPS events occurred.^{11/} The utilities will forgo collection in rates of unrealized sales and unrealized revenues until the utility demonstrates improvements in identifying, evaluating, weighing, and reporting public harm when determining whether to initiate a PSPS event.^{12/}

One week later, on June 10, 2021, Administrative Law Judge Elaine Lau issued a proposed decision on Phase I of the 2019 ERRA Compliance case (2019 ERRA PD), noting that the proceeding would remain open to consider the PSPS issues that had previously been reserved for Phase II of the 2019 ERRA case.^{13/} PG&E submitted comments on the 2019 ERRA PD, requesting that the 2019 ERRA Compliance proceeding be closed because the recent PSPS OII Decision directed that any potential rate adjustment to reflect unrealized volumetric sales and unrealized revenue would occur only prospectively.^{14/} The Joint Community Choice

^{9/} *Id.*, p. 60.

^{10/} See I.19-11-013, ALJ DeAngelis' Proposed Decision Addressing the Late 2019 Public Safety Power Shutoffs by PG&E, SCE, and SDG&E to Mitigate the Risk of Wildfire Caused by Utility Infrastructure, Attachment 1, (Rev.1 - Redline Version), p. 59 found at: [I1911013 \(Redline Version\) Decision Addressing Late 2019 PSPS Events.pdf](#) (as of Aug. 12, 2021).

^{11/} *Id.*, pp. 280-281, Ordering Paragraph (OP) 1.

^{12/} *Id.*

^{13/} A.20-02-009, Proposed Decision Resolving Phase One of Pacific Gas and Electric Company's ERRA Compliance Application for the 2019 Record Year (Jun. 10, 2021), p. 26, OP 6.

^{14/} A.20-02-009, *Comments on Proposed Decision by Pacific Gas and Electric Company* (June 30, 2021), p. 2.

Aggregators (Joint CCAs) replied, agreeing with PG&E that “with regard to 2019 PSPS events, Investigation (“I.”) 19-11-013 was initiated to specifically consider the 2019 PSPS events. Accordingly, it appears the consideration of 2019 PSPS events in an ERRA proceeding is indeed moot.”^{15/}

A revised 2019 ERRA PD was issued on July 13, 2021, two days before the July 15 voting meeting. The revised PD added the following statements, which was ultimately adopted in D.21-07-013:

D.21-06-014 does not foreclose the Commission from considering the issues that have been scoped for Phase Two of this proceeding. The issue of whether PG&E can adjust or collect its revenue requirement to account for unrealized sales during PSPS events in 2019 has been within the scope of Phase Two of this proceeding. Even as the Commission disallows PG&E from collecting revenues related to PSPS undercollections prospectively after the issuance of D.21-06-014, the Commission is considering in Phase Two of this proceeding whether to allow PG&E to adjust its revenue requirement to account for undercollections resulting from unrealized sales during PSPS events in 2019. The impact of D.21-06-14 will be considered in Phase Two, but will not be resolved here.”^{16/}

PG&E seeks rehearing of D.21-07-013 on the following grounds:

(1) the Decision effectively imposes a *disallowance* or *penalty* based on PG&E’s 2019 PSPS events, which is in direct conflict with the Commission’s decision in the PSPS OII Decision that disallowances shall apply prospectively; and

(2) to the extent the Decision does not intend to propose a disallowance in Phase II of the ERRA Compliance proceeding, the Commission errs in suggesting that adjustments to balancing accounts for ratesetting purposes require Commission approval.

^{15/} *Id.*, Reply Comments of Joint Community Choice Aggregators on Proposed Decision Resolving Phase One of Pacific Gas and Electric Company’s Energy Resources Recovery Account (ERRA) Compliance Application for the 2019 Record Year (July 6, 2021) (JCCA ERRA PD Comments), p. 2.

^{16/} A.20-02-009, 2019 ERRA Proposed Decision (Rev.1-Redline), p. 21, found at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M393/K046/393046125.pdf> (as of Aug. 13, 2021); D.21-07-013, p. 22.

II. STANDARD OF REVIEW

Under Public Utilities Code section 1757.1, subdivision (a), the Commission commits legal error where: (1) the decision was an abuse of discretion; (2) the Commission has not proceeded in the manner required by law; (3) the Commission acted without or in excess of its powers or jurisdiction; (4) the decision of the Commission is not supported by the findings; (5) the order or decision was procured by fraud; or (6) the order or decision of the Commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

A court will review a decision of the Commission to determine whether the Commission “proceeded in the manner required by law.”^{17/} A Commission decision that is contrary to the governing statute will not survive, because it necessarily means the Commission has not proceeded in the manner required by law.^{18/} The interpretation of a statute and what it requires is a question of law subject to independent judicial review.^{19/}

A court will review a decision to determine whether the Commission abused its discretion.^{20/} “An administrative agency may abuse its discretion if it acts arbitrarily or capriciously.”^{21/} A determination that is “not supported by a fair or substantial reason” is arbitrary and capricious.^{22/}

^{17/} Pub. Util. Code, § 1757.1(a)(2).

^{18/} *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 383 (“The PUC’s order, which is predicated on an erroneous interpretation of the statute, is contrary to law”); see *Monterey Peninsula Water Management Dist. v. Public Utilities Com.* (2016) 62 Cal.4th 693, 699 (reversing Commission decision based in part on rejecting Commission’s reading of governing statute).

^{19/} *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.

^{20/} Pub. Util. Code, § 1757.1(a)(1).

^{21/} *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 438; see also *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 114.

^{22/} See *Western Oil and Gas Assn. v. State Lands Com.* (1980) 105 Cal.App.3d 554, 565.

III. ARGUMENT

A. **To the Extent the Commission Intends to Consider Whether to Allow PG&E to “Back Out” the “Undercollections” Associated with its 2019 PSPS Events in Phase II of this Case, the Decision Is in Direct Conflict with the PSPS OII Decision.**

The Decision unlawfully attempts to relitigate compliance of PG&E’s 2019 PSPS events, and thus has not “proceeded in the manner required by law.” Attempting to relitigate the PSPS OII Decision in the 2019 ERRA Compliance proceeding violates Public Utilities Code § 1709 (“In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive”).

As described above, the PSPS OII Decision reviewed PG&E’s 2019 PSPS events for compliance, decided that there were compliance shortfalls, and applied a ratemaking remedy. The Commission explicitly determined that its ratemaking remedy would not apply to 2019 PSPS events, nor any PSPS events occurring prior to the effective date of that decision.^{23/} As originally scoped, the 2019 ERRA Compliance Phase II would address issues such as whether “sales forecasting methods for adjusting revenue requirement under current decoupling policy be adjusted to account for power not sold during a PSPS event?”; “ what methods could be used to account for sales lost during a PSPS distinct from sales reductions due to conservation?”; and whether utilities should “be prevented from adjusting future revenue requirements to make up for any undercollection” due to a PSPS event.^{24/} However, these questions are now moot because the PSPS OII Decision determined that these suggested adjustments should apply to revenue requirements for prospective PSPS events only. There is no need to further investigate the 2019 PSPS events in the 2019 ERRA Compliance Phase II. Such further investigation would effectively relitigate the outcome of the PSPS OII Decision and risk PG&E being subject to

^{23/} See I.19-11-013, ALJ DeAngelis’ Proposed Decision Addressing the Late 2019 Public Safety Power Shutoffs by PG&E, SCE, and SDG&E to Mitigate the Risk of Wildfire Caused by Utility Infrastructure (Rev.1 - Redline Version), Attachment 1, p. 59, found at: [I1911013 \(Redline Version\) Decision Addressing Late 2019 PSPS Events.pdf](#) (as of Aug. 13, 2021) “To minimize the complexity of this ratemaking remedy, this downward rate adjustment will not apply retroactively ~~to 2019~~ but, instead, apply starting on the effective date of this decision.”

^{24/} A.20-02-009, *Assigned Commissioner’s Amended Scoping Memo and Ruling* (Aug. 14, 2020), p. 4.

disallowances for 2019 PSPS events, which is exactly what the PSPS OII Decision determined not to do.

PG&E raised this point in its comments on the 2019 ERRA PD,^{25/} and the Joint CCAs agreed^{26/}: the PSPS OII Decision precludes further consideration of disallowances for 2019 PSPS events. In fact, Commissioner Guzman Aceves' *Amended Scoping Memo and Ruling* for PG&E's 2020 ERRA Compliance proceeding (A.21-03-008) concedes that adjustments to the revenue requirement for the 2019 ERRA Compliance Phase 2 should not be examined in light of the PSPS OII Decision:

“On June 3, [sic] 2021, the Commission issued Decision (D.) 21-06-014 which prohibited PG&E from collecting revenues “equal to the estimated unrealized volumetric sales and unrealized revenue resulting from Public Safety Power Shutoff (PSPS) events” in the future. Therefore, we will not examine whether PG&E should be prevented from adjusting future revenue requirement to make up for any undercollection resulting from PSPS events, as was scoped for PSPS issues in Phase Two of PG&E's 2019 ERRA Compliance proceeding.”^{27/, 28/}

Simply put: multiple parties agree that the PSPS OII completed a compliance review of the 2019 PSPS events and imposed remedies as part of that proceeding.

The PSPS OII Decision includes a footnote noting that “[t]he Commission may also take further actions with regards to the issue of lower volumetric sales during a PSPS in the Energy Resource Recovery Account (ERRA) proceeding or in other appropriate proceedings.”^{29/} But

^{25/} A.20-02-009, *Comments on Proposed Decision by Pacific Gas and Electric Company* (June 30, 2021), p. 2.

^{26/} JCCA ERRA PD Comments, p. 2.

^{27/} *Assigned Commissioner's Scoping Memo and Ruling* (June 21, 2021) (Scoping Memo), p. 7.

^{28/} Note: The 2020 ERRA Compliance Scoping Memo at p. 7 also states that the 2020 ERRA proceeding “will examine whether PG&E should return the revenue requirement equal to the estimated unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2020 and, if so, determine the appropriate methodology for calculating the PSPS unrealized volumetric sales and unrealized revenue.” PG&E affirms that this scope also violates the directives in D.21-06-014 and that such disallowances cannot be assessed without a finding of fact that PG&E's 2020 PSPS events were noncompliant with Commission decisions or otherwise unreasonable. These compliance and/or reasonableness determinations are not within the scope of the ERRA proceedings.

^{29/} D.21-06-014, p. 61, footnote 140.

this cannot mean that the Commission should consider penalizing PG&E for *past* PSPS events in the 2019 ERRA Compliance case. Rather, it seems apparent that the Commission intended to reserve its ability to answer policy questions about PSPS impacts on sales *forecasting* and *future* ratesetting in the ERRA Compliance cases. If the Commission intended for there to be backward-looking disallowances for 2019 PSPS events, it would have directed this in the PSPS OII Decision, rather than clearly ordering that revenue requirements should only be adjusted based on PSPS events occurring *after* June 3, 2021.

Yet despite the clear direction in the PSPS OII Decision, as indicated by PG&E, the Joint CCAs, and the Commission itself, the 2019 ERRA Compliance Decision would have the Commission continue investigating disallowances for the 2019 PSPS events on the grounds that the issue had been scoped into the proceeding previously.^{30/} This justification lacks a basis in law. First, all five Commissioners voted for the PSPS OII Decision and thus unanimously established that any ratemaking remedy for 2019 PSPS events would apply prospectively only. In contrast, the scoping memo in the 2019 ERRA Compliance proceeding reflects the view of a single Commissioner. More importantly, the 2019 ERRA Compliance Scoping Memo was issued long *before* the unanimous PSPS OII Decision. This implies that the direction in that Scoping Memo is stale, has been superseded by the PSPS OII decision, therefore does not reflect the current policy or direction of the Commission. The most recent Commission direction – reflecting the Commission’s unanimous view – is that disallowances due to PG&E’s non-compliance with PSPS rules shall be applied only to future PSPS events until such time as PG&E improves its PSPS performance. This means that the 2019 ERRA Compliance Phase 2 is moot, having been superseded by the subsequent PSPS OII decision, and should not continue despite the apparently contrary direction in the 2019 ERRA Compliance decision.

PG&E does not contest that it is required by the PSPS OII Decision to collaborate with the investor-owned utilities in developing a methodology to quantify the estimated unrealized volumetric sales and unrealized revenue resulting for PSPS events occurring after June 3, 2021,

^{30/} D.21-07-013, p. 22.

report those findings in the ERRA Compliance proceeding, and be subject to a disallowance based on those findings until improvements are made to the PSPS implementation. To the extent that the Commission wants to review the methodology in the 2019 ERRA Compliance Phase II so that the methodology can be used prospectively, the Commission should revise the scoping memo to align with the PSPS OII Decision. Alternatively, the Commission should close the 2019 ERRA Compliance proceeding and address the PSPS OII Decision’s implementation items in a consolidated 2021 ERRA Compliance proceeding, when such disallowances could be applied.

B. As a Balancing Account, ERRA Automatically Adjusts for Any “Undercollections” Associated with Increased or Reduced Sales; the Decision Errs in Suggesting that Such Adjustments Need Commission Approval.

The Decision is also arbitrary and capricious because it appears to assume that PG&E needs to seek Commission permission to make adjustments “to account for undercollections resulting from unrealized sales during PSPS events in 2019.” Because ERRA is a balancing account, such “undercollections” are automatically reflected in PG&E’s revenue requirement; no adjustments are necessary, nor is Commission approval required to make such adjustments.

Balancing accounts were instituted in the late 1970’s and early 1980’s to balance risks between shareholders and ratepayers as a result of forecast uncertainty. For example, the Electric Revenue Adjustment Mechanism (ERAM) was established in late 1981 to protect utilities from the risk of inaccurate sales forecasts, as well as to eliminate the disincentive for active conservation programs. ERAM’s purpose was to ensure that *all* authorized base rate costs are recovered regardless of differences between estimated and actual sales levels. In return for this shift in risk, however, customers have been guaranteed rate adjustments in the next ratemaking period, to accommodate either overcollections or undercollections.^{31/} In general, balancing accounts keep track of over- or under-collections, which are subsequently refunded or recovered through rate adjustments in the next forecast period. These rate adjustments ensure

^{31/} D.96-12-025, *In Re Proposed Policies Governing Restructuring California's Elec. Services Indus. & Reforming Regulation* (Dec. 9, 1996) 69 CPUC2d 534.

that the utility recovers its authorized revenue requirement. The majority of PG&E's revenue requirement is tracked through balancing accounts.

A disallowance is an adjustment to the authorized revenue requirement intended to discourage imprudent utility activity. Public Utilities Code § 451 requires the Commission to ensure rates are just and reasonable. To ensure rates are just and reasonable, the Commission may 'disallow' certain costs the utility incurs in its balancing account from recovery in rates. This means that shareholders, rather than ratepayers, pay for the utility's incurred-but-disallowed expenses. The disallowed amount is removed from the balancing account, effectively reducing the utility's authorized revenue requirement for that balancing account.

The Commission abused its discretion in D.21-07-013 because there is no fair or substantial reason to conclude that the Commission needs to consider adjustments "to account for undercollections resulting from unrealized sales during PSPS events in 2019."^{32/} The balancing account structure already measures the over- or under-collections due to the 2019 PSPS events and carries over those over- or under-collections into the next year's ratesetting process. No other adjustments to rates are necessary. No additional Commission approval is needed.

If, however, the Commission intended to consider adjustments *to the revenue requirement* to account for undercollections for 2019 PSPS events, this "adjustment" is a disallowance. The PSPS OII Decision determined that it would not impose any penalty or disallowance on PG&E for its 2019 PSPS events. For the reasons argued above, the Commission cannot now, in its 2019 ERRRA Compliance proceeding, reverse that outcome by "disallowing" certain "undercollected" amounts associated with the 2019 PSPS events.

IV. CONCLUSION

A plain reading of the PSPS OII Decision language is clear: adjustments to revenue requirements shall only apply to PSPS events occurring after the date of the decision, June 3, 2021. Disallowances or downward rate adjustments cannot not apply retroactively to PSPS

^{32/} D.21-07-13, p. 22.

events that occurred in 2019 or 2020. D.21-07-013 commits legal error by drawing a distinction between revenue requirement adjustments and disallowances that does not exist in fact or law and then by directing that the same issues be relitigated in Phase II of 2019 ERRRA Compliance, which exposes PG&E to relitigation for conduct related to 2019 PSPS events.

Respectfully Submitted,

JENNIFER K. POST
KRISTIN D. CHARIPAR

By: /s/ Kristin Charipar
KRISTIN D. CHARIPAR

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 535-4138
Facsimile: (415) 973-5520
E-Mail: Kristin.Charipar@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: August 16, 2021